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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JOHN MARKLE, an individual,

Plaintiff,

vs.

CITY OF LIVINGSTON, a local government
entity; GAGANDEEP KANG, ROBERT T.
GARCIA; VANESSA L. PORTILLO;
and DOES 1 through 20, inclusive,

Defendants.

Case No. 1:23-cv-01708-KES-EPG

**JOINT STIPULATION REGARDING
DEFENDANT CITY OF LIVINGSTON'S
WITHDRAWAL OF ITS NOTICE OF
MOTION AND MOTION TO DISMISS
PLAINTIFF'S SECOND AMENDED
COMPLAINT AND ORDER**

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF**
2 **RECORD:**

3 Plaintiff JOHN MARKLE (“Plaintiff”), by and through his counsel of record,
4 and Defendant CITY OF LIVINGSTON (the “City”), by and through its counsel of record, hereby
5 stipulate and agree to the City’s withdrawal of its Notice of Motion and Motion to Dismiss
6 Plaintiff’s Second Amended Complaint as follows:

7 WHEREAS, on December 11, 2023, Defendants the City and Vanessa Portillo removed
8 this case to Federal Court from the Superior Court of the State of California for the County of
9 Merced. The operative complaint at that time was Plaintiff’s Second Amended Complaint (“SAC”);

10 WHEREAS, on December 18, 2023, Defendants the City and Vanessa Portillo filed a
11 Notice of Motion and Motion to Dismiss Plaintiff’s SAC and, thereafter, the Parties fully briefed
12 their positions on the Motion to Dismiss;

13 WHEREAS, this Court has not yet decided Defendants’ Motion to Dismiss;

14 WHEREAS, on February 18, 2025, pursuant to Plaintiff’s and Defendant Portillo’s joint
15 stipulation to dismiss Defendant Portillo with prejudice, and the City’s later filed approval of this
16 the stipulation, this Court dismissed Defendant Portillo as a defendant, with prejudice; and

17 WHEREAS, given the amount of time that has passed since the City filed its Motion to
18 Dismiss, the ever-changing composition of the City’s Council, the fading memories of witnesses,
19 and the Parties’ desire to move forward with litigating this matter, the Parties have met and
20 conferred and agreed to stipulate to allow the City to withdraw its Motion to Dismiss;

21 **NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED AS**
22 **FOLLOWS:**

23 1. The City may withdraw its Motion to Dismiss Plaintiff’s Second Amended
24 Complaint upon approval of the Court; and

25 2. The City will file an Answer to Plaintiff’s Second Amended Complaint within thirty
26 (30) days of the Court’s notice of approval of the City’s withdrawal of its Motion to Dismiss
27 Plaintiff’s Second Amended Complaint.

28 ///

IT IS SO STIPULATED:

DATED: March 2, 2025

LAW OFFICE OF MOORAD, CLARK & STEWART

By: /s/ Lawrence Niermeyer

ADAM STEWART
LAWRENCE NIERMEYER
Attorneys for Plaintiff,
JOHN MARKLE

DATED: March 2, 2025

BUCHALTER
A Professional Corporation

By: /s/ Michelle M. Brookfield

THOMAS M. O'CONNELL
JENNIFER M. MISETICH
MICHELLE M. BROOKFIELD
Counsel for Defendant,
CITY OF LIVINGSTON

ORDER

Having considered the parties' stipulation, and good cause appearing therefore, it is hereby ordered that:

1. The City's motion to dismiss plaintiff's second amended complaint, Doc. 4, is withdrawn; and
2. The City shall file an answer to plaintiff's second amended complaint within thirty (30) days of the date of this Order.

IT IS SO ORDERED.

Dated: March 2, 2025


UNITED STATES DISTRICT JUDGE